

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

INTEGRATED CONTROL SYSTEMS	:
INC., & ROBERT A. JACOBSEN,	:
Plaintiffs,	:
	:
-vs-	: Civ. No. 3:00cv1295 (PCD)
	:
ELLCON-NATIONAL, INC.,	:
Defendant.	:

RULINGS ON MOTIONS FOR PROTECTIVE ORDER

Plaintiff Integrated Control Systems, Inc. (“ICS”) and deponent Richard Strada move for a protective order precluding production of documents related to non-party companies. For the reasons set forth herein, the motion is **denied**.

I. BACKGROUND

The present attempt by defendant Ellcon-National, Inc. (“Ellcon”) to collect its judgment has been the subject of two separate motions by ICS to clarify the judgment by limiting the subject of the judgment to a Connecticut corporation bearing the ICS name. The most recent ruling on the subject, dated May 21, 2002, provided that “[s]hould the issue of out-of-state enforcement arise following Ellcon’s discovery efforts, it will be dealt with in due course and after the parties have provided sufficient evidence to render a finding on the issue” and permitted plaintiff to depose movant and holder of the documents that are the subject of the present motion for a protective order, Richard Strada, ICS’s accountant. The ruling further provided that “[e]ven if Ellcon sought discovery to establish its theory, which does not appear at present to be the case, such discovery is not necessarily impermissible. *See First City, Texas Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 54 (2d Cir.

2002).” ICS now seeks a protective order precluding discovery and quashing the subpoena duces tecum for documents involving all companies bearing the name “IMPAC,” the alias of ICS, and “Integrated Control Systems.”

II. DISCUSSION

ICS’s position is that it, as a Connecticut corporation, is the only entity against whom the judgment may be enforced, thus Ellcon may not seek discovery on other companies bearing the same or similar name incorporated outside Connecticut. Ellcon responds that its request is primarily to establish the transfer of assets outside Connecticut by ICS Connecticut but also argues that discovery as to alter ego status is appropriate.

A protective order is appropriate to prevent discovery sought for purposes of harassment or abuse of process. *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983). A party seeking a protective order must establish good cause for its issuance. *See Penthouse Int’l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 391 (2d Cir. 1981) (citation omitted); *see also* FED. R. CIV. P. 26(c); *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992). It is further without question that, pursuant to FED. R. CIV. P. 69(a), a creditor “is entitled to discover the identity and location of any of the judgment debtor’s assets, wherever located.” *Nat’l Serv. Indus. v. Vafla Corp.*, 694 F.2d 246, 250 (11th Cir. 1982). Although post-judgment discovery is not a license to inquire into the assets of non-judgment debtors, *Magnaleasing, Inc. v. Staten Island Mall*, 76 F.R.D. 559, 561 (S.D.N.Y. 1977), discovery related to the assets of non-judgment debtors is permissible when there is a reasonable belief that they have received assets transferred from the judgment-debtor,

see id., or a third party is believed to be the alter ego of the judgment debtor, *see First City, Texas Houston, N.A.*, 281 F.3d at 54.

Although it is ICS's position that companies bearing the IMPAC or ICS name incorporated outside of Connecticut are not its alter egos, it has not established the same and thereby established good cause for issuance of a protective order. Discovery related to the alter ego status of judgment debtors is permissible as a continuation of jurisdiction over the original proceedings and an appropriate part of efforts to enforce a judgment. *See id.*; *see also Aioi Seiki, Inc. v. JIT Automation, Inc.*, 11 F. Supp. 2d 950, 952-54 (E.D. Mich. 1998) ("An action to pierce the corporate veil is not a new cause of action, but merely a determination of whether multiple entities exist as separate entities or as mere alter egos of each other."). Although Ellcon will not be given *carte blanche* to inquire into the finances of unrelated corporations, it is in no way apparent that companies bearing the ICS name under a different state of incorporation are in fact unrelated. Ellcon will be afforded the opportunity to establish its alter ego theory for purposes of enforcing its judgment. Although it may not ultimately prove its alter ego theory, ICS has not shown that the theory is sufficiently meritless to support issuance of an order precluding discovery in efforts to satisfy the judgment in Ellcon's favor.

III. CONCLUSION

The motions for a protective order (Docs. 39 & 41) are **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, December ___, 2002.

Peter C. Dorsey
United States District Judge